

## CHAPTER XVII.

### THE LEGAL PRINCIPLES OF PUNISHMENT.

#### *§ 1.—Kind of Punishment allowed.*

In the course of considering the offences which may be committed in connection with forests and their produce in transit, allusion has been made to sentences of fine and imprisonment; it is therefore necessary to study shortly the questions which any intelligent person will at once perceive to arise on the subject of legal punishment. The nature and amount of punishment, whether under the Indian Penal Code or under the Forest Act, must be learned from the Indian Penal Code.

The Forest Act speaks merely of "fine" and "imprisonment"<sup>1</sup>; but the rules of the general criminal law applicable to these punishments are to be gathered from the Indian Penal Code, Chapter III<sup>2</sup>.

The only punishments known to the law are (Indian Penal Code, Section 3):—

(1) Death.

(2) Transportation (penal servitude in the case of Europeans or Americans). (Section 56.)

<sup>1</sup> The student will remember that in all Acts passed after Act I of 1868 (General Clauses Act), the word "imprisonment" by itself means either "rigorous" or "simple," as defined in the Penal Code. Of course the Penal Code itself never uses the word except with the qualifying epithet—rigorous (*i.e.*, with hard labour) or simple (without hard labour), unless imprisonment generally—of any kind—is obviously indicated by the context.

<sup>2</sup> It was not, at first, stated in the Code itself that this chapter applied to the infliction of punishments under special laws: and in so far as it deals with sentences of death, transportation, penal forfeiture of property on conviction, and fine, the limit of which is not stated (*e.g.*, sections 54—68), its provisions do not practically come into play; but sections 64, 65, 66, 67, 68, 69 and 70 have been declared by Act I, 1868 (General Clauses Act) to apply to fines and sentences of imprisonment in default, &c., under the Forest and other special laws, unless there is an express provision to the contrary. And the recent Act VIII of 1882 amending the Penal Code, further provides that, in sections 64, 65, 66 and 71, the term "offence" means any offence whether under the Code or any other law.

- (3) Forfeiture of property (in cases where there is a death sentence or one of transportation).
- (4) Imprisonment (simple or rigorous).
- (5) Fine.

To these Act VI of 1864 has added (6) *Whipping*, in certain cases,

The Forest Act also provides (7) Confiscation<sup>3</sup> of property and implements in connection with a forest offence, which constitutes a special form of penalty peculiar to forest cases, and of course has no connection whatever with the forfeiture (above mentioned) of all property, or forfeiture of rents and profits for a time, contemplated in certain grievous cases, as accompanying a sentence of death or transportation.

With the first three of these forms of punishment, applicable only in heinous cases, it is not practically necessary that the Forest Officer should concern himself.

I may also here, though out of its order, dispose of the additional punishment of *whipping* (Act VI of 1864). This cannot be inflicted for any offence prosecuted under the *Forest Act* at all, not even to juvenile offenders, who by the Whipping Act can be punished with whipping ("inflicted by way of school discipline") for any offence (not punishable with death) under the *Penal Code*<sup>4</sup>.

In cases of forest crime punished under the *Penal Code*, whipping could be inflicted as an *alternative* to other punishment, in the cases specified in the Act; and as an *additional* punishment, in case of second conviction of the offences mentioned in section 4 of the Act (but it must be the "same" offence).

<sup>3</sup> I ought perhaps to add as a form of punishment that in cases of forest fire, the *suspension of forest rights* may be ordered (section 25, *Forest Act*, last clause).

"Compensation" (the *dommages intérêts* of French law) may also be awarded as well as fine by the sentence of a Magistrate in Forest cases, under section 25.

<sup>4</sup> And the *Forest Act* contains no express provision. Some Acts do, for instance for certain offences in Cantons (Act XXVI of 1870), under the Criminal Tribes Act (XXVII of 1871), &c.

**§ 2.—*The Procedure for inflicting Punishment is a separate matter.***

The student will bear in mind that while the substantive law deals with the nature and amount of punishment, and the cases in which each kind is appropriate, the Adjective or Procedure law also has to go into some further matters connected with the *mode* of inflicting the punishment, the place of imprisonment, the mode of levying fines, the instrument with which whipping is to be administered, and so forth.

**§ 3.—*Cumulative Punishment.***

I should also here make an allusion to the case noted in section 71, Indian Penal Code, which is applicable to all offences (made so by the amending Act VIII of 1882).

Where anything is an offence which is made up of parts, and any of the parts is by itself an offence, the offender cannot (in the absence of an express provision to the contrary) be punished with "the punishment of more than one of such offences." The illustration in the Code is that of A beating Z with fifty strokes of a stick. The whole beating constitutes an offence, *viz.*, of "voluntarily causing hurt"—but each blow is also an offence: nevertheless, under the restriction of this section, A could not get fifty punishments, but only one punishment, for the whole beating. A forest illustration would be the case of a man cutting down fifty trees illegally; here he would be punished for one whole offence, being probably charged with a gross offence under the Mischief section of the Penal Code (not merely for a forest offence); but in any case he could not get fifty sentences, one for each tree.

It is also provided<sup>5</sup> that if a person commits an act which is a double offence, that is, falls within two or more separate definitions of an offence, he cannot get a *separate* punishment consequent on each definition and the offence thereby arising; he can only get

\* Formerly this was contained in the old (1872-74) Criminal Procedure Code, section 454, clause II; it is now properly added to section 71, Indian Penal Code, by the amending Act VIII of 1882. It is not a procedure matter. The procedure rules about charging, when the same acts come within the definition of more than one offence, may be seen in section 235 of the (new) Criminal Procedure Code.

one, which may be the severest he would be liable to according to either definition.

At the same time the *charge* may *specify* all the separate offences, but the sentence can only be the maximum for any one offence, or for the offence resulting (if a separate one<sup>6</sup>) from their combination.

#### SECTION I.—OF IMPRISONMENT AND FINE.

##### § 1.—*Penalties under the Forest Acts.*

The punishments awardable under the Forest Act are imprisonment and fine. It will be desirable therefore to describe them more in detail. As regards the amount of penalty. In section 25, Indian Act, the same maximum amount is by law provided; leaving it to the Magistrate to order an appropriate imprisonment and fine within the limit. But for offences under rules made under section 32 (protected forests), section 41 (timber transit), 51 (salving), the rules themselves are to indicate the amount of penalty. I am not aware that there is any benefit in the distinction. The Burma Act is the same; except that in reserved forests the offences are classified into two sets; the less important are punished with fine only, extending to 50 rupees (or double that if the damage done exceeds 25 rupees), the graver (section 26) are punished as in the Indian Act, with either fine or imprisonment or both.

##### § 2.—*Imprisonment.*

Imprisonment, as I have already stated, may be either rigorous (with hard labour) or simple (without), and in the Forest Act and all other Acts passed since the beginning of 1868, the term "imprisonment" would by itself mean (as explained by the General Clauses Act)<sup>7</sup> imprisonment of either description.

<sup>6</sup> In the case put, the cutting of 50 trees, the combined offence is not a separate one from the offence of cutting one tree.

Take, on the other hand, the case of intentionally destroying 50 young trees by fire; each tree might only be worth Rs. 5 say, so that the separate offences of mischief, if charged under the Penal Code, would only come under section 426, but the combined offences would bring the value up to Rs. 250, and so the more severe punishment under section 436 would be awardable.

<sup>7</sup> Act I of 1868, section 1, para. 18.

"Solitary confinement" is a form of imprisonment regulated by section 73, Indian Penal Code. It cannot be awarded in any sentence under the Forest Act<sup>8</sup>, but can of course be ordered, if the trial has been under the Indian Penal Code and the sentence is one of *rigorous* imprisonment. The rules about solitary confinement, and the limit of it, are contained in sections 73 and 74, Indian Penal Code; but it is not necessary for the forest student to enter into further detail.

### § 3.—Fine.

In the case of offences under the Indian Penal Code, or those under section 62 of the Forest Act, where "fine" is mentioned without specifying any limit, it is understood that there is no artificial or legal limit, but that the fine must not be "excessive," i.e., with reference to the means, position, or circumstances of the offender. This is provided by the Indian Penal Code, section 63.

Under the Forest Act, fine is limited to Rs. 500; but besides this, and as part of the sentence, such compensation for damage done to the forest as the convicting Court may award can be ordered to be paid. This only refers to cases against a reserved forest estate (section 25), not to cases in protected areas (section 32), although the penalty is otherwise the same. The Burma Act is the same.

Under section 42 (B. section 44) the general limits of punishment for breach of rules regarding timber transit are the same: but, as already explained, the section admits of aggravating circumstances which may double the penalty. Offences against rules under section 51 (Ind. and B. Acts) have also the same general limit of penalty.

Residuary rules not specially provided for, have naturally a narrower limit of penalty (one month's imprisonment and 500 rupees fine or both) under section 76. In Burma it was not thought

<sup>8</sup> Because section 73 refers only to an offence under the Indian Penal Code, not to offences under special law.

necessary to provide these. There are no such subsidiary rules under the Act as would require a penalty.

#### § 4.—*Imprisonment in default of Fine.*

In all cases of fine (whether under Forest Act or Penal Code) a term of imprisonment may be (and always should be, except in very trivial cases of fine) awarded, to take effect *in default of payment*. (Indian Penal Code, section 64, as amended by Act VIII of 1882.)

When fine has been imposed along with imprisonment, or has been imposed alone, although imprisonment might have been added as part of the principal sentence, the order of imprisonment in default of fine may always be in addition to the original sentence of imprisonment (if any). The term imposed in default, in such cases cannot exceed *one-fourth* of the maximum term of imprisonment provided for the offence (section 65, Indian Penal Code), nor, as a matter of procedure, can any Court impose a sentence in default of fine, exceeding *its own power* of imprisonment or *one-fourth* of that power, in cases where a substantive sentence of imprisonment has been awarded as well as fine. (Criminal Procedure Code, section 33.)

If the offence is punishable with fine only, the alternative imprisonment must be regulated by section 67, Indian Penal Code, i.e., not exceeding two months where fine does not exceed Rs. 50, or four months where it does not exceed Rs. 100, or six months in any other case, and is *simple*.

Imprisonment in default, whatever it may be, of course terminates directly the fine is paid or recovered (section 68), and if a part of the fine is paid or recovered, a proportional part of the imprisonment in default is remitted. (Section 69.)

#### § 5.—*Recovery of Fines.*

The method of levying and recovering fines is a matter of *procedure* (see Chapter on Criminal Procedure); but as regards the period within which a fine, so to speak, remains in force, and is liable to be recovered, the Indian Penal Code provides that it can be levied at any time within six years from date of sentence, or should the prisoner be under sentence of imprisonment for more than six